

# 2008 BCSECCOM 543

October 3, 2008

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Takeover Bids - Exemption from the take-over bid requirements in Part 2 of MI 62-104 and the corresponding provisions of the *Securities Act* (Ontario) - The Filer wants an exemption from the formal take-over bid requirements of Part 2 of MI 62-104 and sections 93 to 99.1 of the *Securities Act* (Ontario) - An issuer wants to complete a take over bid that meets some, but not all, of the conditions of the foreign bid exemption set out in s. 4.4 of MI 62-104 and s. 100.3 of the *Securities Act* (Ontario) - The bid is being done in compliance with French law; issuer has made reasonable commercial efforts to determine Canadian beneficial ownership in the target; excluding the issuer's shares, the number of the target's shareholders in Canada is less than 10% of the number of target shareholders worldwide; securityholders in Canada will receive the same information as other target securityholders; the bid will satisfy all other conditions required for an exempt take-over bid

## Applicable British Columbia Provisions

Multilateral Instrument 62-104, Part 2 and Part 6

In the Matter of  
the Securities Legislation of  
British Columbia and Ontario (the Jurisdictions)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
IAMGOLD Corporation (the Filer)

## Decision

## Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for exemptive relief from Part 2 of Multilateral Instrument 62-104 – *Take-Over Bids and Issuer Bids*

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and the corresponding provisions of the *Ontario Securities Act* (the Take-Over Bid Requirements) in connection with an unsolicited conditional voluntary tender offer (the Offer) under the standard procedure provided in articles 232-1 and following of the general regulation (*règlement général*) (the General Regulation) of the Autorité des marchés financiers (France) (the French AMF) for all existing common shares (the Shares) of Euro Ressources S.A. (the Target) and all the Shares that may be issued following exercise of subscription options (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation incorporated under the *Canada Business Corporations Act*;
  - 2. the Filer is a reporting issuer or has equivalent status in all Canadian provinces and territories;
  - 3. the common shares of the Filer are listed on the Toronto Stock Exchange (TSX), the New York Stock Exchange and the Botswana Stock Exchange;
  - 4. based on a review of the reporting issuer lists maintained on the web sites of the securities regulatory authorities in the provinces of Canada in which the Filer is a reporting issuer, the Filer is not in default of any requirement of Canadian securities laws;

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5. the Target is a *Société anonyme à conseil d'administration* (a corporation with a board of directors) incorporated under the laws of France having its registered office in Paris, France;
6. the Target is a reporting issuer or has equivalent status in all Canadian provinces;
7. the Shares of the Target are listed on the Euronext Paris S.A. and on the TSX;
8. as at the date of its latest management information circular, May 26, 2008, the Target has an outstanding share capital of €605,914.60 divided into 60,591,460 Shares and 1,525,001 outstanding subscription options to acquire Shares;
9. the Filer announced on August 29, 2008 its plan to launch the Offer for (i) all of the Shares and (ii) all Shares that may be issued after that date following the exercise of subscription options;
10. the Offer will be made at a price of €1.20 per share under French securities laws in compliance with the standard procedure provided in article 232-1 and following of the General Regulation and will be open to all holders of Shares who are located inside France and outside of France unless, under the local laws and regulations applicable to such holders, they are subject to legal restrictions preventing their participation in the Offer;
11. on August 29, 2008, a draft Information Note (*Note d'Information*) describing the Offer (the Information Note) was filed by Société Générale (SG), as presenting bank acting on behalf of the Filer with the French AMF for review; under applicable French law, SG is required to guarantee the content and irrevocable nature of the undertakings made by the Filer in the context of the Offer;
12. the General Regulation requires that the French AMF verify the conformity of the Offer with applicable legal and regulatory provisions in France; on October 1, 2008, the French AMF issued a declaration of conformity (*déclaration de conformité*) constituting approval (*visa*) of the Information Note;
13. the General Regulation also requires that the Filer file a separate additional information document containing factual information on the Filer's legal, financial and accounting situation (the Additional Information Document), no

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later than the day before the day on which the Offer will be opened for acceptance;

14. the Information Note and the Additional Information Document disclose all information required from the Filer in connection with the Offer under the General Regulation including information as to (i) the Filer, (ii) the Target, (iii) the reasons for the Offer, (iv) the terms and conditions of the Offer which may be varied or waived with the AMF's consent, including valid acceptances in respect of Shares representing 50% plus one of the Shares, calculated on a fully diluted basis, being tendered to the Offer (the Minimum Acceptance Threshold) and (v) certain financial information;
15. the Target is required to publish a document in response to the Offer as well as a separate additional information document with factual information;
16. the French AMF will determine the Offer timetable; the announcement by the French AMF of the principal terms the Offer will mark the beginning of the Offer period, which will continue until the final results of the Offer are announced, usually about two weeks after the closing date of the Offer acceptance period; the Offer acceptance period will start the day following the publication by the Filer (i) of a financial disclosure statement specifying the manner in which the final Information Note will be made available to the public, and (ii) the Additional Information Document; the Filer currently anticipates that the Offer will be open for acceptance on October 6, 2008; the French AMF may extend the offer timetable at any time during the Offer acceptance period for any other reason; finally, if the Minimum Acceptance Threshold is reached, the French AMF will automatically re-open the offer for a further period of no fewer than 10 trading days to allow additional acceptances;
17. the Offer constitutes a "take-over bid" within the meaning of the Legislation as certain security holders' last address as shown on the books of the Target is in Canada; therefore, the Offer is subject to the Take-Over Bid Requirements unless otherwise exempt from them;
18. Section 4.4 of MI 62-104 and the corresponding provisions of the *Ontario Securities Act* (Foreign Take-Over Bid Exemption) is available if certain conditions are met, including that security holders in Canada whose last address as shown on the books of an offeree issuer beneficially own less than 10% of the Shares at the commencement of the Offer (Beneficial Ownership Condition);

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19. the Applicant indirectly holds 3,000,097 Shares of the Target representing 4.9% of the outstanding Shares (the Filer Shares);
20. the Filer requested a complete list of security holders of the Target under the applicable provisions of MI 62-104 and the Securities Act (Ontario); the Filer has not received the complete list as of today's date;
21. the Filer has made reasonable commercial efforts to determine the percentage of Shares beneficially owned by security holders in Canada; based on the available information, Canadian holders of Shares beneficially hold, in the aggregate about 10.7% of the outstanding Shares; this percentage is lowered to about 5.8% if the Filer Shares (which amount to approximately 4.9%) are excluded from the calculation;
22. the published market on which the greatest volume of trading in the Shares occurred in the 12 months ended August 29, 2008 is the Euronext Paris S.A., representing approximately 99% in the aggregate;
23. if the exemption requested hereby is granted, holders of Shares in Canada will be treated in the same manner as holders of Shares in France as contemplated under the Foreign Take-Over Bid Exemption, in particular:
  - (a) the Information Note, Additional Information Document and all other documentation made available to holders of Shares in France will concurrently be made available by the Filer to all holders of Shares in Canada and will be filed by the Filer with the securities regulatory authorities or regulator of each of the applicable local jurisdictions together with a short supplement intended for Canadian shareholders;
  - (b) while the Information Note and the Additional Information Document are both filed in France in French, the Filer will make available English and French versions to holders of Shares in Canada; and
  - (c) the Filer will issue a press release and place an advertisement in a national Canadian newspaper and a French newspaper that is widely circulated in Quebec advising of the Offer, describing its principal terms and conditions and describing how holders of Shares can obtain copies of the Offer documentation free of charge; and
24. therefore, based upon the information available to the Filer, were it not for the Filer Shares, the Filer could rely on the Foreign Take-Over Bid Exemption.

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### Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided the Offer and all amendments to the Offer comply with the Foreign Take-Over Bid Exemption, except for the Beneficial Ownership Condition, including that:

- (a) the Offer and any amendments thereto are made in compliance with French securities laws;
- (b) the Information Note, Additional Information Document and all other documentation made available to holders of Shares resident in France concurrently be made available by the Filer to all holders of Shares in Canada and filed by the Filer with the securities regulatory authorities or regulator of each of the applicable local jurisdictions together with a short supplement intended for Canadian shareholders;
- (c) the Filer makes the Information Note and the Additional Information Document available in their English and French versions to holders of Shares in Canada; and
- (d) the Filer issues a press release and places an advertisement in an a national Canadian newspaper and a French newspaper that is widely circulated in Quebec advising of the Offer, describing its principal terms and conditions and describing how holders of Shares can obtain copies of the Offer documentation free of charge.

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